

REMARKS

Examiner has rejected Claims 1, 3-4, 6-19, and 21 under 35 U.S.C. §112 "as being indefinite," wherein Examiner suggests changing the limitation "activated means" of Claim 1 to read, "wherein upon activation, said means for transmitting said at least one message transmits a message status statement to the user, wherein said means for transmitting said at least one message requires a direct order to perform a task, said direct order selected from a group of orders comprising play, erase, save, repeat, forward, reply, datestamp, playback, stop, and delete, wherein a voice control system receives, recognizes and interprets each said direct order from the user irrespective of the sequence, and directs a microprocessor in accordance with a task objective of each said direct order." In response, per Examiner's suggestion, Applicant has amended Claim 1 to delete the reference "activated" means, and has inserted the phrase "upon activation."

With respect to Claim 21, Examiner has found "insufficient antecedent basis" for step f. "allowing the user to verbally dictate from an infinite set of commands to direct subsequent message handling," wherein Examiner suggests changing the limitation to "allowing the user to verbally dictate from set of commands to direct subsequent message handling." In response, Applicant has amended Claim 21 to remove the modifier "an infinite" from set of commands.

Applicant specifically notes, however, that the set of commands able to be learned and utilized by Applicant's device and in Applicant's method is not intended to be limited to any particular number of commands.

Examiner has rejected Claims 1, 3-4, 6, 8 and 22 under 35 U.S.C. §103(a) "as being unpatentable over *Knuth et al* (5,406,618) in view of *Ahluwalia* (6,370,506)." Specifically, Examiner refers to *Ahluwalia* ('506) as disclosing Applicant's "direct order" functionality. In response, Applicant respectfully traverses Examiner's rejection.

Ahluwalia ('506), as understood by Applicant, is a system for coordinating existing "tone" signaled phone-access systems under a single voice-command base, whereby a user customizes his or her voice-command base to personal "tone" controlled accounts. This is clearly unlike Applicant's invention, wherein Applicant has invented a motion-activated device that has speech/conversational intelligence to enable efficient, personalized and dynamic utilization by each user during each interaction, wherein a user can verbally command the motion activated device to call/connect to a remote voice-mail system, to act on on-site voice messages, to notify, receive, compose and transmit e-mail messages, and/or to manage messages in any format for future and/or interval delivery to a third-party or to the user himself. Applicant's device can function in an isolated manner as a

motion-activated, voice-controlled messaging device, or it can be connected to external voice-mail and/or email. Applicant respectfully asserts that his device is NOT described or rendered obvious by the cited art, because "in determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious." *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983).

None of the references, even if combined, describe Applicant's invention. Further, even if "the references relied upon teach that all aspects of the claimed invention were individually known in the art," that "is **not** sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levingood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). No such motivation or suggestion exists in any of the cited patents to make a combination thereof. Examiner states that, "one of ordinary skill in the art understands that voice commands of a voice mail system of *Ahluwalia* is desirable in the voice mail system of *Knuth et al.*" However, "the level of skill in the art **cannot** be relied upon to provide the suggestion to combine references." *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999).

CONCLUSION

The above amendments to the claims are corrections to form and thus, no new matter was added. In light of the above-amended claims, Applicant respectfully believes that Independent Claims 1, 21 and 22, and all remaining Claims depending therefrom are now allowable. Should there be any questions or concerns, the Examiner is invited to telephone Applicant's undersigned attorney.

Respectfully submitted, this 3rd day of June, 2005.



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